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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re Marriage of JULIE L. ALDRIDGE and DENNIS ALDRIDGE.	
JULIE L. ALDRIDGE, Appellant, v. DENNIS ALDRIDGE, Respondent.	G055666 (Super. Ct. No. 10D005499) O P I N I O N

Appeal from an order of the Superior Court of Orange County, James L. Waltz, Judge. Affirmed in part, reversed in part and remanded with directions.

Gary Paul Levinson for Appellant.

No appearance for Respondent.

I. INTRODUCTION

Since 2010, by its terms subdivision (a)(2) of Family Code section 2030 has required the court to make certain findings "[w]hen a request for attorney's fees and costs is made[.]"[1] (See *In re Marriage of Shimkus* (2016) 244 Cal.App.4th 1262, 1279-1280 (*Shimkus*); *In re Marriage of Morton* (2018) 27 Cal.App.5th 1025, 1030 (*Morton*).) Those findings include "whether there is a disparity in access to funds to retain counsel, and whether one party is able to pay for legal representation of both parties." In this postjudgment proceeding the court made no such findings even though there was a request for attorney fees and costs. Following the statute, we are forced, as another panel of this court did in *Shimkus*, to reverse and remand the judgment so that the trial court can reconsider the appellant's request for attorney fees and costs in light of section 2030.

II. BACKGROUND

In June 2010 Dennis Aldridge (Dennis) filed a petition for dissolution of his marriage to Julie Aldridge (Julie). The marriage had lasted just a little over 10 years. There were no children.

At the time Julie was about 48 years old and unemployed. She had been arrested twice for driving under the influence, and had no valid driver's license. Dennis was about 61 years old. His occupation does not appear in our record, though the parties' standard of living was found to be $15,000 a month.

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[1] The complete subdivision reads: "When a request for attorney's fees and costs is made, the court shall make findings on whether an award of attorney's fees and costs under this section is appropriate, whether there is a disparity in access to funds to retain counsel, and whether one party is able to pay for legal representation of both parties. If the findings demonstrate disparity in access and ability to pay, the court shall make an order awarding attorney's fees and costs. A party who lacks the financial ability to hire an attorney may request, as an in pro per litigant, that the court order the other party, if that other party has the financial ability, to pay a reasonable amount to allow the unrepresented party to retain an attorney in a timely manner before proceedings in the matter go forward."

All statutory references are to the Family Code.

The proceedings were contentious. The docket sheet alone from 2010 to August 2015 goes on for 25 pages of fine print, much of it involving protective orders sought by Dennis. Marital status was terminated in December 2011.

A judgment on reserved issues was finally filed in October 2013. The October 2015 judgment provided for a $52,374 equalization payment from Dennis to Julie. It set out a "need-based" attorney fee order requiring Dennis to pay a total of $34,600 to Julie's attorney. Dennis' ability to pay was predicated on his ownership of DMA Greencare Contracting, as well as his testimony and his expert's testimony, though no specific cash flow figure was mentioned.

The judgment also required Dennis to pay Julie $4,000 a month spousal support for life, but included what in family law is known as a "*Gavron*" warning. A *Gavron* warning is a judicial admonition to a supported spouse about the need to become self-supporting. (See *In re Marriage of Gavron* (1988) 203 Cal.App.3d 705, 712.) The January 2013 judgment on reserved issues noted that Julie had made no effort to become employed in the previous three years, had the ability to be gainfully employed, and thus faced the possibility that spousal support might one day be terminated.

Sometime prior to April 20, 2015, Julie suffered a criminal conviction for the burglary of Dennis' residence in a criminal case filed as 12NF1951. Prior to November 12, 2014, Dennis requested of the county probation department in the criminal proceeding that Julie be required to pay him $22,520.45 for loss or damage to his property.

Dennis' claim for restitution provided an opportunity for Dennis to reduce his equalization payment. By August 2015, he had apparently paid down the $52,374 to $38,508.27. In a hearing in the family law court (presided over by this trial judge), Julie agreed to accept $25,000 in full payment of the existing equalization obligation in return for Dennis' agreement no longer to seek restitution in the criminal case.

In January 2016, the "*Gavron* warning" from the October 2013 judgment on reserved issues proved prescient. The trial court terminated the $4,000 spousal support payment effective October 2015. The trial judge found that Julie had "not accepted responsibility for so much of her behavior."

By June of 2017 a few more loose ends remained. In January 2017, Julie was ordered to pay $4,800 to Dennis in restitution in the 12NF1951 criminal case. There had been no formal order embodying either the August 10, 2015 open court agreement, or the January 2016 order terminating spousal support, and the court appears to have been unaware of them.

On June 1, 2017, Julie obtained a fee waiver and filed a request for an order (RFO). In her RFO Julie contended Dennis had committed a "clear and unambiguous" violation of the August 2015 open court agreement to "refrain from requesting restitution in [Julie's] criminal action." She therefore sought to make the $4,800 restitution order go full circle: Dennis would be ordered by the family court to pay $4,800 to Julie, who would then turn around and pay the probation department $4,800, which would then be forwarded to Dennis in fulfillment of the restitution order in the criminal court. Julie's attorney sought $7,500 in attorney fees from Dennis for his work in filing and prosecuting the RFO. The relevant Judicial Council standard form for fee requests (FL-319) referenced a number of Family Code statutes in the bottom of the right hand corner, including section 2030.

The June 2017 RFO was heard October 2, 2017. Much of the hearing turned on Dennis' efforts – or lack of them – vis-à-vis the restitution issue in the criminal case. Julie's position was that Dennis had violated the August 2015 open-court agreement by submitting a restitution claim of $22,520.45 to Julie's probation officer on March 30, *2016*. Dennis' position was that he had brought a copy of the transcript from the August 2015 hearing to Julie's probation proceeding (precisely when is not in record) to show the criminal court he was no longer seeking restitution, but was told (the record

is also not clear by whom) that the family law case "did not have any bearing on the criminal court matter."

The trial court did not expressly resolve the conflict as to just how much Dennis had done to honor his August 2015 promise not to seek restitution. Rather, the trial judge determined to end the matter that day with one decisive stroke: The only witness who actually testified at the October 2017 hearing was Julie's probation officer. The trial judge asked the probation officer directly what it would take for Dennis to waive restitution. The officer answered that all he needed to do was notify the probation office "in writing, even if it's a plain piece of paper with his signature, that states he no longer wishes for us to collect restitution on his behalf." The judge then directed Dennis' attorney to go to the attorney's conference room and prepare such a written waiver, complete with proper caption for Julie's criminal case. The trial judge even promised to notarize it himself. The result, per the testimony of the probation officer, would be a "zero balance" on the amount of restitution Julie owed. A formal waiver of restitution was filed that very day.

But the matter of Julie's attorney fees for filing the RFO in the first place remained undecided. In her RFO Julie had asked for $7,500 in attorney fees. She filed an income and expense form that showed her unemployed with no income. Dennis filed no income and expense declaration. Julie's RFO had previously been scheduled for August 2017, but Dennis hadn't been ready for that hearing, so Dennis stipulated to being responsible for an hour and a half of Julie's attorney's time.

The trial judge took the matter of attorney fees under submission. Nine days later, on October 11, 2017, he filed a minute order on the topic. Dennis was ordered to pay Julie's attorney $450 – apparently the amount he agreed to pay as a result of not being ready for the August hearing – but nothing else. The minute order expressly denied Julie's request for "sanctions-based attorney fees" under section 271 because of a "failure

of proof." But the minute order made no mention of section 2030 or any need-based request for fees. Disappointed with the fee order Julie timely filed this appeal.

III. DISCUSSION

On appeal, Julie argues she was entitled to a fee award under two statutes, sections 2030 and 271. Section 271 is directed at sanctionable conduct and invokes trial court discretion. The statute is not need-based, but directed at a given party's behavior during the family law litigation. (*In re Marriage of Falcone & Fyke* (2008) 164 Cal.App.4th 814, 828.) We may therefore dispose of it summarily – the trial court certainly acted reasonably in rejecting any fee request based on the way the case had been litigated. There was nothing sanctionable about counsel's conduct.

Section 2030 is a different matter. The old doctrine of implied findings that we would otherwise employ to affirm the order no longer applies by the very text of the statute. It is written, literally, in a simple if-then format: If a request for fees is made, then the trial court shall consider X,Y, and Z.

It is thus not surprising then that in one of the first published decisions to examine 2010's amendments to section 2030, this court held that a trial judge's merely checking certain boxes on a form failed to satisfy the "section 2030 requirement that the court make findings" and required a remand so those findings would be made. (*Shimkus, supra,* 244 Cal.App.4th at p. 1280.) Two years later, in *Morton*, our colleagues in Fifth District interpreted the words "'shall make findings' to require explicit findings, either in writing or on the record." (*Morton, supra,* 27 Cal.App.5th at p. 1050.)

In the present case there are no findings at all in regard to any section 2030 need for attorney fees; certainly none on the record. It appears the trial court thought that only "sanctions-based attorney fees" were before it. That was not correct.[2]

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[2] The trial court's belief is in large measure Julie's fault. When her attorney had the chance to point out to the trial court that she was seeking a need-based fee award under section 2030 and findings were necessary, he failed to take advantage of it. The reporter's transcript is bereft of any mention of those ideas.

We acknowledge that reversal seems unfortunate under these circumstances since *this* trial judge obviously cared about the case and did his best to end what he correctly declared to be an "overlitigated" case by resolving Julie's RFO then and there. But whatever the Legislature's intent, it did what it did. Dennis has not filed a respondent's brief, thus foregoing the opportunity to make an effective counter-argument.

It is true that reversal for failure to make the findings required by section 2030 still requires prejudicial error. (*Morton, supra*, 27 Cal.App.5th at p. 1051.) Anything less would violate our statute Constitution (art. 6, § 13), as explained generally in *F.P. v. Monier* (2017) 3 Cal.5th 1099 (*Monier*).

The test for prejudicial error is whether a trial court's failure to make the required finding would have made any difference. (See *Monier, supra*, 3 Cal.5th at p. 1114.) Applying this standard, we conclude we must reverse because we cannot say the error was harmless. The way the text of section 2030 is structured, any fee request requires the trial court to address three discrete issues: (1) "whether an award of attorney's fees and costs under" section 2030 "is appropriate"; (2) "whether there is a disparity in access to funds to retain counsel,"; and (3) "whether one party is able to pay for legal representation of both parties."

We cannot say the record *compels* the result reached by the trial court so as to render the omission of findings harmless. If the trial court had focused on the three questions of section 2030, the court might have made some sort of attorney fee award in Julie's favor. Dennis didn't file an income and expense declaration, and there was substantial evidence of Julie's need, including the fee waiver granted her in early June

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But while in large measure Julie's fault, it wasn't entirely her fault. The presence of Julie's income and expense declaration necessarily belied the idea that her request was solely predicated on sanctions under section 271; section 271 has nothing to do with need. Moreover, a filing by Julie's attorney of October 10 made the point that "attorney fees *and* sanctions are at issue" – our italics, indicating that a fee request beyond section 271 was being made. That point was then underscored by Julie's emphasizing Dennis' failure to file an income and expense declaration. The only reason to focus on the income and expenses of the parties was because at least Julie's attorney thought that need-based fees under section 2030 were also before the court.

and her income and expense declaration showing no employment. So we remand to allow the trial court the opportunity to make the findings required under section 2030 and consider whether an award under the statute is appropriate.

IV. DISPOSITION

The order of October 11, 2017 is affirmed to the extent it denied Julie fees under section 271. The order of that date is reversed to the extent it denied Julie fees under section 2030, and the matter is remanded to the trial court to address the 2030 fee issue in the first instance.

As to costs, Julie might have prevented this trip to the Court of Appeal by explicitly bringing section 2030's language to the trial court's attention in oral argument. Accordingly, we decline to award costs against Dennis. Julie shall bear her appellate costs in this proceeding.

We express no opinion as to whatever attorney fee request on Julie's part might yet emerge from this appeal.

BEDSWORTH, ACTING P. J.

WE CONCUR:

ARONSON, J.

FYBEL, J.